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96-45

October 10, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: AT&T Inc. Request for Review by AT&T Inc. of Decision of the  
Universal Service Administrator

Dear Ms. Dortch:

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Pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("*Confidential Information Order*") and in accordance with the Freedom of Information Act ("FOIA") and the Commission's Rules related to public information and inspection of records, e.g. 47 C.F.R. §§ 0.457 and 0.459, AT&T Inc. ("AT&T"), on behalf of itself and its affiliates, hereby submits this request for confidential treatment of information submitted to the Commission in its Request for Review of a Decision of the Universal Service Administrator. This request applies to all of the information submitted herewith to the Commission.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

Appendix A to AT&T's Request for Review is an audit report by the Universal Service Administrator of AT&T's contributions to the Universal Service Fund, and discloses detailed information concerning AT&T's revenues from the provision of interstate telecommunications services. Appendix B to AT&T's Request consists of correspondence between USAC auditors and AT&T personnel regarding the audit. The foregoing information is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), AT&T requests that such information not be made routinely available for public inspection.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in support of AT&T's Request for Review of a Decision of the Universal Service Administrator.

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**(3) Explanation of the degree to which the information concerns a service that is subject to competition.**

The records being provided to the Commission involve various telecommunications services provided by AT&T in competition with other carriers. Telecommunications is a highly competitive industry, and AT&T's services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9<sup>th</sup> Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

**(4) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

The information includes detailed information concerning AT&T's revenues from the provision of various interstate telecommunications services, and correspondence between USAC and AT&T regarding USAC's audit of AT&T, and is highly confidential.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.<sup>1</sup> For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.<sup>2</sup> The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

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<sup>1</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>2</sup> *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

The materials being provided to the Commission are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside the company. Disclosure would subject AT&T to substantial competitive harm.

The records being provided to the Commission contain detailed information concerning AT&T's revenues from the provision of highly competitive, interstate telecommunications services, as well as correspondence between USAC and AT&T concerning USAC's audit of AT&T, and thus represent confidential commercial information that should not be released under the FOIA. Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9<sup>th</sup> Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.<sup>3</sup> Specifically, the Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. *See In re Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).<sup>4</sup> The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."<sup>5</sup>

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<sup>3</sup> *See e.g. In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618, November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*; *Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994)(keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records* 45 RR 2d 1705 (1979)(keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (July 17, 2000)(keeping confidential marketing plans and strategy information).

<sup>4</sup> Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

<sup>5</sup> *Confidential Information Order* at ¶ 8.

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis within AT&T and would not ordinarily be disclosed to parties outside the company. Company practices instruct employees not to disclose such information outside the company and restrict access to this information.

**(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be kept confidential for an indefinite period. Confidential treatment must be afforded these materials as long as they would provide a basis for AT&T's competitors to gain insight into AT&T's business operations. AT&T cannot determine at this time any date on which the information would become "stale" for such a purpose.

**(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

#### **Conclusion**

For all the foregoing reasons AT&T requests that the Commission withhold from public disclosure pursuant to Section 0.459 of the Commission's Rules the proprietary commercial and financial information contained in AT&T's Request for Review by AT&T Inc. of Decision of Universal Service Administrator. If the Commission is unable for any reason to keep this information confidential, AT&T respectfully requests that the Commission return the information to AT&T pursuant to Section .0459(e) of the Rules.

Should you have any questions please contact me on (202) 457-3058. My office address is 1120 20th St. N. W., Suite 1000, Washington, DC 20036. Thank you for your attention to this matter.

Very truly yours,

/s/ Christopher M. Heimann  
Christopher M. Heimann  
General Attorney

Attachments

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review by AT&T Inc. of	)	CC Docket No. 96-45
Decision of Universal Service	)	
Administrator	)	

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**REQUEST FOR REVIEW BY AT&T INC. OF  
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

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**October 10, 2006**

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054**

In the Matter of	)	
	)	
Request for Review by AT&T Inc. of	)	CC Docket No. 96-45
Decision of Universal Service	)	
Administrator	)	

**REQUEST FOR REVIEW BY AT&T INC. OF  
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

**I. STATEMENT OF INTEREST AND ISSUES**

Pursuant to sections 54.719(c), 54.721 and 54.722 of the Commission's rules,<sup>1</sup> AT&T Inc., on behalf of its wholly owned subsidiary, AT&T Communications (hereinafter, collectively "AT&T"), hereby seeks review of the August 9, 2006 decision of the Universal Service Administrative Company ("USAC") to approve the Final Audit Report of AT&T.<sup>2</sup> In its Final Audit Report, USAC erroneously concluded that (1) it should reclassify certain of AT&T's 2005 reseller revenue to end user revenue because several of AT&T's resellers did not contribute to the universal service fund ("USF") despite AT&T having "received signed USF certifications from its resellers";<sup>3</sup> and (2) although "[p]repaid card providers are not always able to determine how much retailers are charging end users for each individual card," AT&T should have reported revenues from the "face value" of the card, which USAC itself is unable to quantify, rather than the revenues AT&T received from the sale of cards to wholesalers and retailers, who set the

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<sup>1</sup> 47 C.F.R. §§ 54.719(c), 54.721, 54.722.

<sup>2</sup> Letter to James Dionne, AT&T Communications, from Leslie Bellavia, Manager of Internal Audit, Filer ID 806172 (dated August 9, 2006) ("Final Audit Report"). See Appendix A.

<sup>3</sup> Final Audit Report at 6.

price at which such cards were sold to retail customers.<sup>4</sup> For reasons provided below, AT&T respectfully requests that the Wireline Competition Bureau ("Bureau") or Commission reverse and remand to USAC these two incorrect audit findings.<sup>5</sup> As a result of the audit and as explained by USAC in its report, it was determined by USAC and AT&T that AT&T significantly over-contributed in 2005.<sup>6</sup> AT&T therefore requests that the Commission direct USAC to accept AT&T's revised 2005 499-A Form and to refund AT&T its overpayment.

## II. STATEMENT OF FACTS

### A. BACKGROUND ON HOW AN UNDERLYING CARRIER REPORTS ITS RESALE REVENUES AND ITS OBLIGATION TO CONTRIBUTE BASED ON THOSE REVENUES.

Pursuant to the Commission's current contribution methodology, AT&T, like all providers of interstate telecommunications, must contribute to the Commission's universal service mechanisms based on its interstate and international telecommunications services revenues.<sup>7</sup> In its rules and orders implementing the universal service provisions of the 1996 Act, the Commission required resellers to contribute directly to universal service (with limited exceptions) and directed underlying, wholesale carriers to exclude revenue from resellers from their USF contribution bases. In particular, in its original *Universal Service First Report and Order*, the Commission held that section 254(d) requires every telecommunications carrier that provides interstate telecommunications services, "including . . . resellers," to contribute to the

<sup>4</sup> *Id.* at 24.  
<sup>5</sup> We note that USAC sought guidance from the Commission on several issues that are the subject of the Final Audit Report. According to the Final Audit Report, in an October 13, 2005 memorandum, USAC sought guidance from the Commission on the "appropriate method to determine the face value of minute-base[d] prepaid calling cards of the type sold by AT&T." *Id.* Also, in a November 4, 2005 memorandum, USAC sought Commission guidance on the regulatory classification of AT&T's enhanced ATM-Frame Relay service offering. *Id.* at 34. As AT&T explained in its response to USAC's initial audit findings, it submitted memoranda both to USAC's auditors and to Commission staff in support of its regulatory classification of interworked ATM-Frame Relay services and incorporated by reference that submission therein. *Id.* AT&T reserves the right to supplement its response to USAC based on any subsequent Commission guidance on this issue.  
<sup>6</sup> *See id.* at 6 (explaining that AT&T contributed, among other things, on frame relay revenues although those revenues were carrier's carrier revenues).  
<sup>7</sup> 47 C.F.R. § 54.706.



universal service support mechanisms.<sup>8</sup> And, in order to promote competitive neutrality, the Commission ruled that all such providers should contribute based on end-user telecommunications revenues.<sup>9</sup> The Commission found that assessing contributions on other bases, such as "gross revenues" or "net telecommunications revenues,"<sup>10</sup> would distort competition and, in particular, disadvantage resellers.<sup>11</sup> Specifically, the Commission concluded that assessing contributions on gross revenues would effectively count revenues derived from the same services twice (once at the wholesale level and again at the retail level), and place resellers at a competitive disadvantage vis-à-vis facilities-based competitors selling directly to end users.<sup>12</sup> The Commission found that basing contributions on end-user revenues would eliminate this problem,<sup>13</sup> and thus required carriers to contribute to the fund based exclusively on end-user telecommunications revenues and to exclude revenues derived from services sold to a reseller,<sup>14</sup> except where the reseller is "not required . . . to contribut[e] directly to the universal service

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<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, para. 787 (1997) ("*Universal Service First Report and Order*").

<sup>9</sup> *Id.* at para. 844.

<sup>10</sup> By "net telecommunications revenues," the Commission meant "gross revenues net of payments to other carriers for telecommunications services." *Id.* at para. 842.

<sup>11</sup> *Id.* at paras. 843-45.

<sup>12</sup> *Id.* at paras. 845-46 (noting that, under a gross-revenue contribution methodology, a reseller likely would have to pay USF contributions twice; once based on its own end-user revenues, and again through a charge imposed by the reseller's underlying carrier to recover its own USF contributions). The Commission further concluded that a "net telecommunications revenues approach" likely would cause distortions by encouraging carriers to buy services from intermediate carriers that could not incorporate contributions into those intermediate carriers' prices for contractual reasons, rather than using their own facilities. *Id.* para. 850.

<sup>13</sup> *Id.* at para. 848. The Commission also found that basing contributions on end-user revenues would be administratively easy to implement because carriers already were required to track revenues for billing purposes. And, while carriers would have to distinguish sales to end users from those to resellers, "resellers [would] have an incentive to notify wholesalers that they are purchasing services for resale to get a lower price that does not reflect universal service contribution requirements." *Id.*

<sup>14</sup> 47 C.F.R. § 54.711(a) ("Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the FEDERAL REGISTER.").

support mechanisms,” in which case the reseller must be treated as an end user by its underlying carrier.<sup>15</sup>

Contributors report revenues using two broad categories: revenues from other contributors to the Commission’s universal service mechanisms, and revenues from all other sources.<sup>16</sup> Underlying carriers report revenue under the first category, the so-called “carrier’s carrier revenue” or “revenues from resellers” category, when they provide telecommunications services to other entities that (1) can reasonably be expected to contribute to the USF and (2) resell the service in the form of telecommunications, not as information services.<sup>17</sup> The 499-A Instructions explain what documented procedures an underlying provider should have to ensure that it accurately reports its “revenues from resellers” and caution filers that if they do not have independent reason to know that the reseller satisfies these procedures, the filer should obtain a signed statement from the reseller certifying that these criteria are met.<sup>18</sup> In 2004, Bureau staff

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<sup>15</sup> See Instructions to the Telecommunications Reporting Worksheet, Form 499-A (“499-A Instructions”) at 5 (emphasis added). Unless otherwise noted, all references to the 499-A Instructions will be to the Commission’s 2005 version, which covers the year at issue in the instant appeal (i.e., AT&T’s calendar year 2004 revenues). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5482 para. 298 (1997) (*Fourth Order on Reconsideration*) (“[E]ntities that qualify for the *de minimis* exemption should be considered end users for Universal Service Worksheet reporting purposes. Entities that resell telecommunications and qualify for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for universal service contribution purposes.”).

<sup>16</sup> See 499-A Instructions at 17.

<sup>17</sup> *Id.* at 18; see also 1998 Universal Service Worksheet, FCC Form 457 Instructions at 12-13 (rev. 2/98) (1998 457 Instructions) (“[A] reseller is a telecommunications service provider that 1) incorporates purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings. . . . The underlying contributors would report the . . . [revenues from such carriers] as revenues from resellers and those revenues would not be incorporated in determining the underlying contributor’s universal service contribution.”); *id.* at 13 (resellers that are exempt from paying universal service “should be treated as end users for reporting purposes because these entities are *not required to contribute directly to federal universal service.*”) (emphasis added).

<sup>18</sup> 499-A Instructions at 18; see also 1998 457 Instructions at 13 (“If the underlying contributor does not have other reason to know that [a resale carrier] will, in fact, resell service, then the contributor should obtain a signed statement to that effect.”); 1998 Universal Service Worksheet, FCC Form 457 Instructions at 18 (rev. 2000) (1999 457 Instructions) (same); 2000 FCC Form 499-A Instructions at 13 (2000 499-A Instructions) (“If the underlying contributor does not have independent reason to know that the [resale] entity will, in fact, resell service and contribute to the federal universal service support mechanisms, then the underlying carrier should either obtain a signed statement to that effect or report those revenues as end user revenues.”); 2001 FCC Form 499-A Instructions at 15 (2001 499-A Instructions) (same); 2002 FCC Form 499-A Instructions at 15 (2002 499-A Instructions)

modified the instructions to add that “[f]ilers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users.”<sup>19</sup>

As noted in the Final Audit Report, AT&T and its wholly owned subsidiary Alascom, Inc. had obtained signed certifications from all of the resellers to whom it sold telecommunications services in calendar year 2004 in accordance with the Commission’s 499-A Instructions.<sup>20</sup> USAC auditors, however, are seeking to reclassify AT&T’s and Alascom’s “revenues from resellers” (reported in Block 3 of the 499-A Form) to “revenues from all other sources” (reported in Block 4 of the form) for those resellers that failed to contribute directly to the USF.<sup>21</sup> USAC asserts that this reclassification is appropriate because “[a]lthough AT&T received signed USF certifications from its resellers, many of the forms were not updated annually.”<sup>22</sup> As a result, USAC erroneously reclassified \$15,893,970 in “revenues from resellers” to end-user revenues in its Final Audit Report.<sup>23</sup> The effect of this reclassification is to make AT&T liable for the USF contributions of its resellers from whom AT&T had obtained signed certifications.

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(adopting the language used in the current instructions); 2003 FCC Form 499-A Instructions at 16 (2003 499-A Instructions) (same); 2004 FCC Form 499-A Instructions at 17 (2004 499-A Instructions) (same). Beginning in 2002, the instructions to the Commission’s Telecommunications Reporting Worksheet for the first time noted that “[c]urrent contributors to universal service are identified” on the Commission’s website. 2002 499-A Instructions at 15; 2003 499-A Instructions at 16; 2004 499-A Instructions at 17; 2005 499-A Instructions at 18.

<sup>19</sup> *Id.*

<sup>20</sup> Final Audit Report at 6.

<sup>21</sup> *Id.* (noting that 6% of AT&T’s resellers failed to contribute to the USF in 2004 and 12.5% of Alascom’s resellers did not contribute in 2004). It is unclear to AT&T whether these resellers failed to contribute in part or in whole to the USF during 2004.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

**B. BACKGROUND ON A PROVIDER'S OBLIGATION TO REPORT AND CONTRIBUTE BASED ON PREPAID CALLING CARD REVENUES.**

Effective October 31, 2006, Commission rules expressly require all prepaid calling card providers to contribute to the USF.<sup>24</sup> One year earlier, the Commission determined that AT&T's enhanced prepaid calling card was a telecommunications service and directed AT&T to contribute based on the revenues from this type of card.<sup>25</sup> Neither the Commission's new rule nor the Commission's prepaid calling card orders discuss, however, the methodology that these providers should use when contributing to the USF based on these revenues. Indeed, no Commission order has ever addressed this matter, other than to state that these cards are telecommunications services and not information services<sup>26</sup> or to repeat language set forth in the instructions to support the position that telecommunications carriers are required to contribute to the USF based on their prepaid calling card revenues.<sup>27</sup> Rather, through drafting the 499-A Instructions, Commission staff has determined how carriers should report these revenues. The 499-A Instructions define prepaid card providers as entities that

Provide[] prepaid calling card services by selling prepaid calling cards to the public or to retailers. Prepaid card providers typically resell the toll service of other carriers and determine the price of the service by setting the price of the card and controlling the number of minutes that the card can be used for.<sup>28</sup>

The instructions also state that contributors should:

include revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amounts actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail

<sup>24</sup> *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order, FCC 06-79 (2006) ("Prepaid Calling Card Order").

<sup>25</sup> *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005).

<sup>26</sup> *See id.* at para. 32 (citing *Time Machine, Inc.*, 11 FCC Rcd 1186, para. 40).

<sup>27</sup> *Id.* at n.66 (citing 1999 499-A Instructions only to support the point that providers are required to report and contribute based on their prepaid calling revenues).

<sup>28</sup> 499-A Instructions at 14.

*establishments. All prepaid card revenues are classified as end-user revenues. For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards.*<sup>29</sup>

USAC states in its Final Audit Report that "AT&T did not report the value of prepaid calling cards sold to end users. Instead, AT&T reported revenues generated from sales to its distributors or retailers."<sup>30</sup> And, although it concedes that "AT&T is not able readily to

determine the amount retailers charge consumers for its prepaid calling cards" when such cards have no face value,<sup>31</sup> and that even USAC could not determine what AT&T should have

reported absent guidance from the Commission, USAC faults AT&T for its reporting practice yet notes that it sought Commission guidance on how to determine the face value of minute-based prepaid calling cards. Absent Commission guidance, USAC states that it is unable to assess the financial impact of Finding # 4.<sup>32</sup>

### III. ARGUMENT

The Bureau or Commission must reject USAC's conclusions contained in Findings 1 and 4 of the Final Audit Report and remand the report back to USAC, directing it to apply

Commission precedent correctly, providing guidance as necessary on the prepaid calling card issue, and, consistent with AT&T's previous pleadings, directing it to refund or credit AT&T the monies it overpaid in contributions.<sup>33</sup> To uphold USAC's conclusion in Finding 1 would be to hold all wholesale providers of telecommunications services strictly liable for reseller

contributions — a result that is clearly at odds with public policy and years of Commission precedent, stretching back to 1997's *Universal Service First Report and Order*. Similarly,

<sup>29</sup> *Id.* at 24. Bureau staff added this last sentence in 2005.

<sup>30</sup> Final Audit Report at 24.

<sup>31</sup> *Id.* at 23.

<sup>32</sup> *Id.* at 24.

<sup>33</sup> See SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority, CC Docket Nos. 96-45, 98-171, and 97-21 (filed Jan. 10, 2005); AT&T Petition for Review of the Universal Service Administrative Company's Rejection of a Revised Form 499-A, CC Docket No. 96-45 (filed Aug. 8, 2006).

forcing AT&T and other prepaid calling card suppliers to contribute to the USF based on the "face value" of a card where none may exist and where a third party, and not AT&T, sets the rates would not only be fundamentally unfair but contrary to how the entire prepaid calling card industry operates.

**A. AT&T'S TREATMENT OF REVENUES FROM RESELLERS IS CONSISTENT WITH COMMISSION PRECEDENT AND THE 499-A INSTRUCTIONS**

Pursuant to the Commission's instructions, AT&T and Alascom<sup>34</sup> obtained signed certifications from its resellers to whom AT&T sold wholesale telecommunications services during 2004, the period of time covered by the instant appeal. By signing the document, the reseller certified to AT&T that, among other things, it is entitled to an exemption from the USF assessment that AT&T would otherwise charge on the sale of telecommunications services because the reseller contributes directly to the USF and its total reported billed revenues are at least equal to or greater than the total amount of charges that AT&T billed to the reseller for the wholesale telecommunications services. USAC would have the Commission disregard these signed certifications and hold the wholesale provider strictly liable for any contributions that a reseller fails to make. Such a result directly conflicts with Commission precedent and public policy. If a reseller fails to contribute to the USF, USAC's recourse is against the reseller and both USAC and the Commission have ample tools available to address this issue. Accordingly, the Commission should find that AT&T acted reasonably in relying on its signed reseller certifications and should remand this finding back to USAC, directing it to reclassify these revenues back to "revenues as resellers," as AT&T originally and correctly did in its 2005 499-A Form.

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<sup>34</sup> For convenience, AT&T will refer to AT&T and Alascom collectively as "AT&T" for the remainder of this discussion. USAC made the same erroneous finding with respect to Alascom and thus AT&T's response on behalf of Alascom is the same.

*Beginning in 2004, the instructions to the Commission's Form 499-A for the first time admonished that "[f]ilers will be responsible for any additional universal service assessments that result if its customers must be reclassified as end users."*<sup>35</sup> The USAC auditors apparently seize upon this language to support their conclusion that AT&T should have included in its contribution base revenues from resale carriers that defaulted on their obligation to contribute to universal service.<sup>36</sup> Thus the auditors' conclude that, even though AT&T obtained signed certifications from those resellers that they would contribute directly to the fund based on their resale of AT&T's services, those carriers must be reclassified as "end-users" because they ultimately failed to contribute, and AT&T (as the underlying carrier) "is responsible for [the] USF payments."<sup>37</sup>

But the fact that a reseller defaults on its obligation to contribute to USF does not convert that carrier into an end user. The proper classification of a provider as a "reseller" or an "end-user" for revenue reporting purposes does not turn on whether that provider actually pays into the fund, but whether it is legally obligated to do so. The Instructions to Form 499-A thus provide that a "reseller" is a carrier or telecommunications provider that: (1) incorporates purchased telecommunications services into its own telecommunications offerings; and (2) "*can reasonably be expected to contribute to the fund based on revenues from such offerings when provided to end users.*"<sup>38</sup> Insofar as the Commission's rules require providers to contribute to the fund based on revenues from resold services,<sup>39</sup> customers that certify that they are reselling another carrier's services, as in this case, plainly "can reasonably be expected to contribute to the

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<sup>35</sup> 2004 499-A Instructions at 17; 2005 499-A Instructions at 18 (same).

<sup>36</sup> See November 4 E-mail from USAC Auditor to AT&T (see Appendix B).

<sup>37</sup> *Id.*

<sup>38</sup> 499-A Instructions at 18. See also *id.* ("Each filer should have documented procedures to ensure that it reports as 'revenues from resellers' only revenues from entities that *reasonably would be expected to contribute to support universal service.*") (emphasis added).

<sup>39</sup> 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public . . . must contribute to the universal service support programs. Interstate telecommunications include . . . resale of interstate services . . .").

fund.” And an underlying carrier is required to treat a reseller as an “end user” for revenue reporting purposes only if that reseller is not obligated to contribute directly to universal service for some other reason – such as because the reseller meets the criteria for the *de minimis* exemption, for example.<sup>40</sup> Even then, the onus is on the reseller to notify its underlying carrier that it should be treated as an end-user: “[i]f . . . a reseller qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service, so that it may be treated as an end user when the underlying carriers file FCC Form 499-A.”<sup>41</sup> Thus, a customer that resells another carrier’s interstate services as telecommunications is a “reseller” unless it is legally exempt from contributing directly to universal service for some other reason, irrespective of whether it actually contributes.

USAC contends that, even if the certifications AT&T obtained from its resale customers were valid when given, the certifications were not valid after one year, and AT&T therefore was required either to obtain a new certificate from each of its resale customers for each filing year or to verify that its customers were contributing to the fund, apparently by reviewing the list of contributors on the Commission’s website. But USAC points to nothing in the Commission’s rules and orders that suggest that a resale customer’s certification automatically expires after one year, or that carriers are required to obtain a new certification from each resale customer for each

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<sup>40</sup> 1998 Form 457 Instructions at 13 (“[R]esellers that qualify for the *de minimis* exemption . . . should be treated as end users for reporting purposes *because these entities are not required to contribute directly to federal universal service.*”) (*emphasis added*); 499-A Instructions at 5 (“[S]ome carriers may be exempt from contributing directly to the universal service support mechanism (e.g. because they are *de minimis*) . . . These non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.”).

<sup>41</sup> 499-A Instructions at 28 (*emphasis in original*). This requirement has not changed since the initial Universal Service Worksheet in 1998. 1998 Form 457 at 5 (“If a reseller qualifies for the *de minimis* exemption, it must notify its underlying carrier that it is not contributing directly to universal service and must be considered an end user for universal service contribution purposes.”) (*emphasis in original*).



filing year.<sup>42</sup> Likewise, USAC fails to identify any basis for its position that carriers must consult the Commission's website to determine whether their resale customers are contributing to the fund, nor does any such basis exist. Since the very first Telecommunications Reporting Worksheet, the Commission made clear that, if a carrier does not have independent reason to know that a customer meets the "reseller" criteria it should obtain a signed statement certifying that the criteria are met. And, while the Worksheet has included a reference to a Commission website where contributors may be identified since 2002, nothing in the Worksheet or Commission orders requires a carrier to consult that website to determine whether the "reseller" criteria are met. In any event, the Commission's website is unreliable for purposes of determining whether the "reseller" criteria are met because the designation of a carrier as a contributor can change overnight with no notice to affected parties.

If USAC's reading of the rules was correct, a reseller could eliminate any legal obligation to contribute to USF simply by refusing to pay. That is because a reseller could, at its option, refuse to pay and be reclassified as an end user, which has no legal obligation to pay in the first place. Such an interpretation would make a mockery of the Commission's rules, and the statutory requirement that every telecommunications carrier contribute to universal service.

USAC's reading of the rules also would be bad policy. Not only would it encourage resellers to ignore their obligation to contribute to the fund, secure in the knowledge that they will not be held liable if they do not, it also would discourage underlying carriers ever from accepting certifications from resellers that they should be exempt from USF pass-through charges. If underlying carriers cannot rely on such certifications, such carriers will have to

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<sup>42</sup> Indeed, insofar as the Commission explicitly places the onus on resale customers to inform underlying carriers if the resale customers are, for any reason, exempt from the obligation to contribute so that the underlying carriers can reclassify them as end users, the Commission's rules and orders suggest that a reseller certification, once given, remains in effect until revoked.

establish elaborate procedures to ensure that resellers actually contribute to USF, raising the cost of resold services, lest the underlying carriers be held liable if their resale customers default on their USF obligations. Moreover, if resale carriers are reclassified as end users for failing to pay USF contributions years after those contributions were due, and their underlying carriers instead are held liable, the underlying carriers may have no ability to recover those contributions from their end users, as contemplated by the Commission's rules. Plainly, such a result is unfair and contrary to Commission policy, particularly where, as here, the underlying carrier obtained signed statements from its resale customers certifying that they were reselling the underlying carrier's services as telecommunications and would contribute to the fund -- as directed by the instructions to Form 499-A.

Adopting USAC's position would be clearly inequitable and discriminatory to underlying providers, in clear violation of the congressional mandates set forth in section 254(d) of the Act. Despite having obtained signed certifications from its resellers and despite the requirement that resellers inform their underlying providers if and when they no longer contribute directly to the USF, USAC would make underlying providers strictly liable for resellers that turn out to be scofflaws. Not only would AT&T be placed at a competitive disadvantage because it contributes to the USF based on its revenues from a particular telecommunications service and its competitor, a reseller, providing the same service does not, USAC's decision to require AT&T to make retroactive payments on behalf of these resellers would force AT&T to increase the price of service to *its* customers because it must now begin contributing on behalf of its resellers.<sup>43</sup>

As noted above, if a reseller is not *de minimis* and has signed a certification with its underlying provider that it contributes directly to the USF and yet fails to do so, USAC's and the

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<sup>43</sup> Pursuant to section 54.712(a), 47 C.F.R. § 54.712(a), AT&T could not seek to recover this additional universal service charge as a line item from *its* customers because *its* customers are already contributing the maximum amount allowed. Thus, AT&T would be forced to pass along this cost in the form of higher prices.

Commission's recourse is against the reseller. Both have ample tools to address this problem. The Commission gave USAC authority to offset any universal service mechanism payments to delinquent contributors and the Commission's red light rule prevents the Commission from acting on any pending application filed by the delinquent reseller and requires the Commission eventually to dismiss the application. If USAC and the Commission are unable to collect on the reseller's debt, the debt is transferred to the U.S. Treasury for collection, which has an even greater ability to collect this debt. For the reasons provided above, the Commission therefore should reject USAC's interpretation of the rules and its recommendation that AT&T reclassify reseller revenues.<sup>44</sup>

**B. AT&T CORRECTLY REPORTED ITS PREPAID CALLING CARD REVENUES**

As noted above, USAC erroneously concluded that AT&T improperly reported its revenues from prepaid calling cards because it reported its booked revenues from the sale of such cards to its distributors or retailers rather than the purported "face values" of the cards when sold to consumers.<sup>45</sup> While USAC acknowledges that "[p]repaid calling card providers are not always able to determine how much retailers are charging end users for each individual card"<sup>46</sup> it nevertheless concludes that AT&T's reports are inconsistent with the 499-A Instructions, which provide:

[Line 411] should include all revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amount actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to

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<sup>44</sup> On a going-forward basis, AT&T has no objection to requiring its resellers to recertify to it on an annual basis. Such a requirement, however, constitutes a rule change and must be applied to all underlying providers after appropriate notice.

<sup>45</sup> Final Audit Report at 23-24. USAC states that it will not assess the impact of this finding on AT&T's contribution until it receives Commission guidance on how it should determine the "face value" of the cards when such cards have no "face value." *Id.* at 24.

<sup>46</sup> *Id.*

distributors or retail establishments. All prepaid card revenues are classified as end-user revenue.<sup>47</sup>

USAC thus takes the position that AT&T's revenue reports were inconsistent with the instructions, even though USAC's auditors themselves cannot determine, much less explain, how those instructions apply in this case, nor can they identify how AT&T should have reported such revenues differently. USAC also claims that AT&T improperly deducted from its prepaid calling card revenues certain volume discounts that it provided to its wholesale prepaid card customers and did not correctly round the jurisdictional percentages to calculate the interstate and international revenues reported on its 2005 Form 499-A.<sup>48</sup>

AT&T's reporting of the prepaid calling card revenue at issue was fully consistent with the Commission's rules and the instructions to the Form 499-A. While USAC correctly concludes that the Form 499-A instructions require prepaid card service providers to report amounts paid by end users for such services (and not amounts paid by intermediate distributors), it wrongly concludes that AT&T is the provider of the prepaid card services at issue to end users. As discussed below, AT&T sells the prepaid card services at issue to its customers at wholesale, and those customers, in turn, resell those services to end users. As a consequence, AT&T's wholesale customers, not AT&T, are the providers of the prepaid card services at issue to end users, and AT&T is required to report on Form 499-A only the revenues it derives from those customers<sup>49</sup> – not the revenues those customers derive from end users.

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<sup>47</sup> *Id.*; see also 499-A Instructions at 24.

<sup>48</sup> Final Audit Report at 23. There is one other prepaid calling card finding. It relates, however, to AT&T's reporting practice prior to calendar year 2004 (and is thus outside the scope of this appeal).

<sup>49</sup> According to the instructions to Form 499-A, such revenues typically would be reported by the underlying carrier – in this case, AT&T – as “reseller revenues,” and excluded from the underlying carriers' contribution base. However, as discussed below, in this case, AT&T understands that its resale customers do not report the revenues they derive from the sale of the prepaid card services at issue to USAC. Consequently, AT&T conservatively decided to treat these customers as “end users,” and include the revenues it received from those customers in its contribution base. AT&T's decision is thus consistent with USAC's earlier finding that an underlying carrier should contribute based on its revenues from resellers – and not the revenues those resellers derive from the resale of the

The instructions to Form 499-A provide that a "Prepaid card provider" is an entity that "resell[s] the toll service of other carriers and determine[s] the price of the service by setting the price of the card and controlling the number of minutes that the card can be used for."<sup>50</sup> In contrast, the instructions state that a marketing agent (such as a retail distributor) is an "entit[y] that market[s] services on behalf of a telecommunications provider."<sup>51</sup> As the auditors themselves acknowledge, AT&T sells the cards to retail outlets, which have complete discretion and control over the price at which they resell the cards to end users, as well as other aspects of the services at issue.<sup>52</sup> Indeed, AT&T's wholesale customers generally are not even required to inform AT&T of the prices they charge to end users for the prepaid card services at issue, and, as the auditors acknowledge, AT&T has no way to determine how much end users actually pay for those services.<sup>53</sup> AT&T's customers thus are not mere distributors or marketing agents for the prepaid card services at issue but rather resellers of those services to end users, and, as a consequence, AT&T was not required to include in its contribution base the revenues those customers derived from the sale of such services to end users, as the auditors contend.

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underlying provider's services – when the underlying carrier has no reasonable basis to expect the reseller to contribute directly to the USF. While AT&T disagrees that the certifications it obtained from resellers were invalid and that AT&T was thus required to treat these resellers as end users, USAC's own analysis confirms that, insofar, as a reseller (such as the provider of prepaid calling cards to end users at issue here) must be treated as an end user by the underlying carrier, that underlying carrier is required to include in its contribution base only the revenues it realized from the sale of service to the reseller – not the reseller's revenue from sales to end users. *See generally* Final Audit Report at 6 (explaining that USAC reclassified certain of AT&T's revenues from resellers to end-user revenues).

<sup>50</sup> 499-A Instructions at 14.

<sup>51</sup> *Id.* at 5 (noting that "[a] reseller is not a marketing agent"). The instructions clarify that "amounts remitted to or retained by [a] marketing agent are treated as expenses of the underlying provider and may not be deducted from the underlying carrier revenues." *Id.* *See also id.* at 24 (reported prepaid card revenues should "represent the amounts actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments").

<sup>52</sup> AT&T's customers, for example, control the content of promotional messages and other information provided to end users via the prepaid calling card platform, and typically agree to indemnify AT&T against certain types of claims by end users.

<sup>53</sup> The only time AT&T knows the price end users pay for the services at issue is when an end user calls to "recharge" or add units to her card. In that context, AT&T books as revenue (and reports to USAC) the full amount charged to the end user for recharging the card, without any deduction for commissions.

Nevertheless, under the circumstances here, AT&T determined that it might be required to report the revenues *it* derived from the sale of the prepaid card services at issue to its wholesale customers, and conservatively did so. While, as discussed above, carriers generally are obligated to report such wholesale revenues as "reseller revenues," and thus exclude them from the contribution base, carriers are required to treat resellers as end users if those resellers cannot reasonably be expected to contribute to the fund. Thus, and in contrast to the situation described above in Finding 1 where AT&T procured signed reseller certifications, in this case, AT&T was aware that the retail outlets reselling the prepaid card services at issue were not, in fact, contributing to the fund. Consequently, AT&T conservatively concluded that it should treat those outlets as "end users." And, consistent with the instructions to Form 499-A and USAC's own analysis in Finding 1 regarding how a carrier should report revenues from resellers that are treated as end users, AT&T contributed to the fund based on the revenues it derived from those customers.<sup>54</sup>

To agree with USAC and therefore to require AT&T to contribute retroactively to the USF based on revenues from prepaid calling cards that may have no face value<sup>55</sup> and based on prices paid by consumers about which AT&T has no knowledge would be an absurd and unjust result. Such a finding also ignores how the prepaid calling card industry operates and would single out AT&T for this unfair treatment. AT&T's customers are currently under no obligation to inform AT&T about the prices consumers pay for these cards, nor do they. Adopting USAC's erroneous finding would be impracticable, if not impossible, to implement retroactively. It

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<sup>54</sup> 499-A Instructions at 18.

<sup>55</sup> When AT&T filed its initial response to USAC's audit, it was under the impression that none of its prepaid calling cards contained a face value (e.g., \$10 dollars). AT&T has subsequently learned that some percentage of its cards do have a dollar amount printed on the card, *however*, it is AT&T's understanding that its customers routinely sell these cards for less than the printed amount. Again, as explained below, AT&T does not control and has no way – contractually or otherwise – to ascertain from its customers how much the ultimate consumer paid for these cards.

would require AT&T to go back to its customers to obtain proprietary revenue data, which the customers are under no legal obligation to provide to AT&T.<sup>56</sup> It also assumes that the customer would still have this information and have it in a form that could be used by AT&T for 499-A reporting purposes (*i.e.*, in a format that isolates prepaid calling card revenue from other streams of revenue).

While AT&T does not concede that its reporting practices with respect to prepaid calling cards were in any way incorrect, it is important to highlight for the Bureau and Commission the inconsistencies contained in the 499-A Instructions and on the 499-A Form itself. Through Bureau staff modifications that were not the subject of notice and comment, the 499-A Instructions have grown in complexity and length. This accretion has sometimes led to internal inconsistencies and the failure to provide notice and comment has led to the inclusion of language that is at odds with how a particular industry operates – in this case, the prepaid calling card industry. For example, the instructions define a “Prepaid Card” provider as one that both “determine[s] the price of the service by setting the price of the card” *and* “control[s] the number of minutes that the card can be used for.”<sup>57</sup> In AT&T’s experience, the overwhelming majority of prepaid calling card providers fail to meet this definition. As AT&T explained above, AT&T’s customer, the reseller, sets the price of the card while AT&T, the wholesale provider, maintains the number of minutes that are decremented from the card.<sup>58</sup> Even USAC acknowledges in its Final Audit Report that AT&T does not meet the definition set forth in the

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<sup>56</sup> It is unclear to AT&T that the Commission would have the authority to compel AT&T’s customers to provide AT&T with this information, though such an action may be required if and when AT&T’s customers balk at AT&T’s request.

<sup>57</sup> 499-A Instructions at 14.

<sup>58</sup> This is true for all of AT&T’s prepaid calling card sales except for the tiny fraction of prepaid calling cards that AT&T sells directly to consumers on its website. For these cards, representing about 1/10 of one percent of AT&T’s prepaid calling card revenue, AT&T reports these revenues in Block 4, as “revenues from all other sources.”

499-A Instructions.<sup>59</sup> Moreover, in the first sentence explaining what is to be reported under Line 411, the instructions state that "This line should include revenues from prepaid calling cards provided *either to customers or to retail establishments*."<sup>60</sup> While AT&T has explained that its reseller customers *are* the retail establishments, if the Bureau or Commission disagrees, which it should not, AT&T nonetheless complied with the instructions because it reported its revenues from prepaid calling cards sold to retail establishments. As explained above, the second sentence of this paragraph again reflects a lack of knowledge about how the prepaid card industry operates. The third and fourth sentences of the paragraph are consistent with the first if the Bureau and Commission agree that sales to retail establishments should be treated by wholesale providers, like AT&T, as end-user revenues. The 499-A Form itself, which assumes that all prepaid calling cards have a face value, likewise shows a misunderstanding about how this particular industry operates.

USAC also claims that AT&T improperly deducted from its prepaid card revenues certain volume discounts that AT&T provided to wholesale prepaid card customers. In support, the auditors apparently rely on the following instructions to Line 411 of Form 499-A: "Gross billed revenues should represent the amounts actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments."<sup>61</sup>

The instructions to Line 411, however, must be read in conjunction with the language of Line 411 itself, which provides that the following revenues should be reported on that line:

"Prepaid calling card [revenues] (including card sales to customers and non-carrier distributors)

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<sup>59</sup> Final Audit Report at 29 (stating that USAC "acknowledges the retail establishments have *complete control* over the price of AT&T prepaid calling cards")(emphasis added).

<sup>60</sup> 499-A Instructions at 24 (emphasis added).

<sup>61</sup> *Id.*



reported at face value of cards.”<sup>62</sup> The instructions to Line 411 thus plainly address discounts provided to or commissions paid by a prepaid card service provider to its marketing agents/distributors – not volume discounts provided by a wholesaler to resellers of prepaid card services. As discussed above, AT&T sells the prepaid card services at issue to its customers at wholesale, and those customers, in turn, resell those services to end users, and thus AT&T’s wholesale customers, not AT&T, are the providers of the prepaid card services at issue to end users. As a consequence, to the extent AT&T was required to include its revenues from the prepaid card services at issue in its contribution base (because, as discussed above, it determined to treat its reseller customers as end users), it was required to report only the revenues it actually derived from the sale of the prepaid card services at issue to its reseller customers, which it did.

USAC further contends that in its 2005 Form 499-A filing, AT&T did not correctly round the jurisdictional percentages to calculate the interstate and international revenues reported on the Form 499-A. USAC is correct that AT&T did not use rounded percentages for purposes of calculating its interstate and international percentages. But the instructions regarding the use of percentages in calculating revenues do not clearly require carriers to calculate the revenues reported in columns (d) and (e) in Block 3 and Block 4 using percentages rounded to the nearest whole number. In particular, the instructions provide:

Percentages. Percentages reported in Block 3 and Block 4, columns (b) and (c), should be rounded to the nearest whole percent. For example, if the exact amount of interstate revenues for a line is not known, but the filer estimates the ratio of interstate to total revenues was .425, then the figure 43% should be reported and used for calculating the amount reported in column (b).<sup>63</sup>

Consistent with the express terms of the instructions, AT&T rounded the percentage in column (b). But, AT&T did not round to the nearest percentage in calculating the revenue

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<sup>62</sup> 2005 Form 499-A, Line 411.

<sup>63</sup> 499-A Instructions at 11.

figures in columns (d) and (e); rather, it calculated the revenue figures using more precise percentages. As a consequence, AT&T's revenue figures reported in columns (d) and (e) more accurately estimated AT&T's revenues. In any event, if AT&T had used whole percentages to calculate its revenues in columns (d) and (e), the interstate and international revenues included in AT&T's contribution base would have been significantly lower than originally reported.<sup>64</sup>

For the reasons provided above, the Bureau or Commission should reject USAC's Finding 4 and remand the audit report back, directing USAC to accept AT&T's methodology used to report its prepaid calling card revenues. On a going-forward basis, AT&T recommends that the Bureau put the prepaid calling card language out for public comment so that the 499-A Instructions and Form can accurately describe how this industry operates and to resolve any ambiguity so that all prepaid calling card providers will report their revenues in the same manner.<sup>65</sup>

### III. CONCLUSION

AT&T respectfully requests that the Bureau or Commission reject USAC's Findings 1 and 4 contained in its Final Audit Report and remand this report back, directing USAC both to accept AT&T's reporting practices with respect to revenues from resellers and prepaid calling cards and to refund AT&T's 2005 overpayment, which only became known during the course of USAC's audit. AT&T has demonstrated that USAC's decision to deem reseller certifications invalid after one year was arbitrary and lacking any basis in Commission precedent. Indeed, USAC failed to cite any Commission document to support its claim – nor could it because no

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<sup>64</sup> See Final Audit Report at 28.

<sup>65</sup> One only need review IDT's pending appeal of a USAC audit to see that such guidance is essential. It is evident that IDT, a competitor to AT&T in the prepaid calling card market, reports its prepaid calling card revenues in a dramatically different manner than does AT&T. See Request for Review of Decision of the Universal Service Administrator by IDT Corporation, CC Docket No. 96-45, at 10-11 (filed April 10, 2005) (explaining that IDT does not report any prepaid calling card revenues on Line 411 but, rather, uses Line 310).

such document exists. If the Commission decides to require resellers to recertify on an annual basis, that obligation must be made on a prospective basis and only after proper notice and comment. AT&T has also shown that it correctly reported its prepaid calling card revenues. Because AT&T did not have a reasonable basis to conclude that its prepaid calling card resellers were contributing directly to the USF, AT&T treated these resellers as end users and, in accordance with the 499-A Instructions, reported its revenues derived from the provision of telecommunications services to these providers. AT&T has demonstrated the difficulties in contributing to the USF based on the "face value" of a prepaid calling card where none exists and requiring the underlying provider to contribute based on prices set by resellers, about which AT&T has no knowledge and over whom AT&T has no control. Based on another appeal of a USAC audit filed by a prepaid calling card competitor to AT&T, it is obvious that Commission guidance on how all prepaid calling card wholesale providers should report their prepaid calling card revenues, if at all, is necessary.

/s/ Christopher M. Heimann

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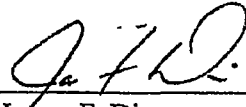
**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054**

In the Matter of	)	
	)	
	)	
Request for Review by AT&T Inc.	)	CC Docket No. 96-45
of Decision of Universal Service	)	
Administrator	)	

**DECLARATION OF JAMES F. DIONNE**

I, James F. Dionne, do hereby, under penalty of perjury, declare and state as follows:

1. My name is James F. Dionne. I am Regulatory Controller with AT&T Corp., a wholly owned subsidiary of AT&T Inc. In that capacity, I was and am familiar with the terms by which AT&T Communications has reported revenues on the FCC Form 499-A, Telecommunications Reporting Worksheet, has been assessed by the Universal Service Administrative Company, and has made contributions to the Commission's universal service mechanisms.
2. In accordance with Commission rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual assertions set forth in the appeal and hereby certify that they are true and correct to the best of my knowledge.

  
\_\_\_\_\_  
James F. Dionne

Dated: 12/10/06

## Appendix A

Contains Confidential and Propriety Information

## Appendix B

Contains Confidential and Propriety Information

## CERTIFICATE OF SERVICE

I, Shandee R. Parran, hereby certify that on this 10<sup>th</sup> day of October 2006, I caused a copy of the foregoing Request for Review of Decision of the Universal Service Administrator by AT&T Inc. in CC Docket No. 96-45 to be sent via US Mail:

Universal Service Administrative Company  
Attn: David Capozzi, Acting General Counsel  
2000 L Street, NW  
Suite 200  
Washington, D.C. 20036

/s/ Shandee R. Parran